

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE PORK ANTITRUST
LITIGATION

This Document Relates To:

THE DIRECT PURCHASER
PLAINTIFF ACTION

Case No. 18-cv-01776 (JRT-HB)

Honorable John R. Tunheim

**DECLARATION OF BOBBY
POUYA IN SUPPORT OF
DIRECT PURCHASER
PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION**

I, Bobby Pouya, declare and state:

1. I am an attorney licensed to practice in the State of California and have been admitted to practice in several courts across the country, including this Court *pro hac vice*. I am a partner of the law firm Pearson, Simon & Warshaw, LLP (“PSW”), Interim Co-Lead Class Counsel for the Direct Purchaser Plaintiff Class (“DPPs” or “Plaintiffs”) in this litigation, along with Lockridge Grindal Nauen P.L.L.P. (“LGN”). I make this declaration in support of the accompanying Direct Purchaser Plaintiffs’ Motion for Class Certification. I have personal knowledge of the facts in this declaration and could competently testify to them if called as a witness.

2. Along with the other attorneys at PSW, I have been responsible for the management and adjudication of this case on behalf of the DPP Class. I have personally overseen and been responsible for a significant portion of the discovery, pleadings, depositions, and hearings in this case.

Background of the Litigation

3. On June 29, 2018, PSW and LGN filed the first direct purchaser complaint, *Maplevale Farms, Inc. v. Agri Stats, Inc., et al.*, No. 0:18-cv-01803, ECF No. 1 (D. Minn.), against the nation’s largest Pork producers alleging an antitrust conspiracy in violation of the Sherman Act, 15 U.S.C. § 1. On January 15, 2020, PSW and LGN filed the operative Third Amended and Consolidated Class Action Complaint (“TCAC”) (No. 0:18-cv-01776, ECF No. 431). The TCAC, as well as all preceding complaints, alleged that Defendants exploited their market power by collectively coordinating output and limiting production in an effort to fix, raise, and stabilize the price of Pork sold in the United States.

Defendants' illegal and conspiratorial conduct caused the DPPs" and the Class to pay supracompetitive prices for Pork and were harmed and injured as a direct and proximate result thereof.

4. PSW and LGN were appointed by this Court as Interim Co-Lead Counsel for DPPs and the DPP Class in this litigation (*see* ECF No. 149), and also Class Counsel for the JBS and Smithfield Settlements (*see* ECF Nos. 631 and 838 (JBS Preliminary and Final Approval Orders); 870 and 1154 (Smithfield Preliminary and Final Approval Orders)). Since the Court's Order, Co-Lead Class Counsel have undertaken the responsibilities necessary to manage and litigate this class action lawsuit. PSW has worked on all aspects of the litigation, including, but not limited to, further investigation of Plaintiffs' claims; preparing complaints motions and other significant filings; appearing at and handling numerous hearings; reviewing documents and appearing at depositions; and coordinating with other Plaintiffs' counsel and defense counsel to efficiently and effectively manage and advance this lawsuit.

5. To date, DPPs have secured over \$101 million in settlements from two Defendants in the case: JBS and Smithfield. In granting final approval to each of these settlements, the Court found that PSW and LGN--acting as Co-Lead Settlement Class Counsel--have and will fairly and adequately represent the DPP Class. *See* ECF Nos. 631 and 838 (JBS Preliminary and Final Approval Orders); 870 and 1154 (Smithfield Preliminary and Final Approval Orders). If the Court grants DPPs' Motion for Class Certification, PSW, along with its co-counsel, will continue to adequately fulfill its duties to the Class members.

PSW has Extensive Class Action and Antitrust Experience and Should Continue to Serve as Co-Lead Counsel on behalf of the Direct Purchaser Class

6. PSW has the experience, resources and ability to adequately represent the DPP Class members in this class action lawsuit. A complete profile of PSW's attorneys, and summary of the numerous litigations in which they have obtained successful results, is set forth in PSW's firm resume attached hereto as Exhibit 1. PSW's firm resume reflects that the attorneys in this case have successfully adjudicated some of the largest and most important class action lawsuits in the United States and have obtained approximately \$3 billion in settlements and verdicts in a wide range of cases. *See* 2020 Antitrust Annual Report, attached hereto as Exhibit 2.

7. PSW served as Co-Lead Counsel in the following significant cases:

- *In re Credit Default Swaps Antitrust Litigation*, MDL No. 2476 (S.D.N.Y.). An antitrust class action alleging an anticompetitive conspiracy by the largest international banks and financial institutions in the world to fix the price of credit default swaps. That case resulted in \$1.86 billion in settlements, making it one of the largest civil lawsuit recoveries in history.
- *In re TFT-LCD (Flat Panel) Antitrust Litigation*, MDL No. 1827 (N.D. Cal.). In that case, PSW helped secure a settlement of over \$443 million for the class and obtained an \$87 million verdict, before trebling, following a five-week trial against the only remaining defendant in the case, Toshiba Corporation and its related entities.
- *In re National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litigation*, MDL No. 2451 (N.D. Cal.). This multidistrict litigation alleges that the NCAA and its member conferences violated the antitrust laws by restricting the value of grant-in-aid athletic scholarships and other benefits that college football and basketball players can receive. PSW settled the damages case, obtaining final approval of a \$208 million settlement. PSW attorneys along with co-counsel prevailed in a bench trial for the injunctive portion of the case, which was appealed to the Ninth Circuit

Court of Appeals (*In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig.*, 958 F.3d 1239 (9th Cir.)) and the Supreme Court of the United States (*Nat'l Collegiate Athletic Ass'n v. Alston*, 141 S. Ct. 2141 (2021)). In a 9-0 decision delivered by Justice Gorsuch, the Supreme Court affirmed the verdict obtained by PSW and co-counsel.

8. PSW currently serves as Co-Lead Counsel in the following significant cases:

- *In re Broiler Chicken Antitrust Litigation*, No. 0:16-cv-08637 (N.D. Ill.). PSW attorneys currently serve as interim co-lead counsel on behalf of direct purchaser plaintiffs. The complaint alleges that the nation's largest broiler chicken producers violated antitrust laws by limiting production and engaging in other conduct in violation of the Sherman Act.
- *Senne, et al. v. Office of the Commissioner of Baseball, et al.*, No. 14-cv-0608 (N.D. Cal.). This is a class action and FLSA collective action on behalf of minor league baseball players who allege that Major League Baseball and its member franchises violated the FLSA and state wage and hour laws by failing to pay minor league baseball players minimum wage and overtime. Trial is scheduled to commence on June 1, 2022.

9. PSW is also counsel of record in *K. Peterson, et al. v. JBS USA Food Company Holdings, et al.* ("Beef"), No. 0:19-cv- 01129-JRT-HB (D. Minn.), and *Olean Wholesale Grocery Cooperative, et al. v. Agri Stats, et al.* ("Turkey"), No. 1:19-cv-08318 (N.D. Ill.).

10. The background and experience of the attorneys at PSW, our efforts to investigate and develop the allegations in this case, and our clients' significant stake in this litigation give my firm and me a solid foundation by which we can continue to prosecute this case efficiently and expeditiously.

PSW Has the Resources and Capacity to Manage this Case Effectively and Efficiently, and is Committed to its Successful Resolution

11. My firm has demonstrated expertise in managing complex class actions and, I respectfully submit, we have demonstrated our experience and commitment in this case and in many others.

12. Our background and experience, our development of the allegations in our complaints, and our solid and extensive commitment of time and resources in this case give our firm a solid foundation to continue to prosecute this case efficiently and expeditiously.

13. Further, our clients' significant stake in this litigation is noteworthy. Each of our clients has dedicated significant time and resources to the advancement of this litigation as more fully set forth in the declarations attached hereto as Exhibits 3 through 6 (Maplevale Farms, Inc.; John Gross and Company, Inc.; Ferraro Foods, Inc. and Ferraro Foods of North Carolina, LLC; and Olean Wholesale Grocery Cooperative, Inc.).

Submission of Evidence in Support of DPPs' Motion for Class Certification

14. As set forth in the concurrently filed Motion for Class Certification, there is extensive evidence in the record to support granting class certification in this case. This evidence, including documents produced in the litigation and depositions taken to date, represents only a small portion of the evidence supporting DPPs' claims in this case.

15. The exhibits cited in support of Plaintiffs' Motion for Class Certification are set forth in the chart below. True and correct copies of these exhibits are attached hereto. All depositions referenced have been limited to the relevant portions cited in support of the Motion for Class Certification. As required by the Protective Order (ECF No. 212), and

further set forth in the forthcoming motion to seal, any exhibits that have been designated as Confidential or Highly Confidential will be filed under seal and are denoted as such in the chart below.

Exhibit No.	Description	Designated as Confidential or Highly Confidential
7	SMITHFIELD03994749	Yes
8	HFC-PORKAT0000033238	Yes
9	SMITHFIELD01071523	Yes
10	CLMNS-0000030331	Yes
11	Phil Clemens Dep. Transcript	No
12	CLMNS-0000645909	Yes
13	SBF0184228	Yes
14	SMITHFIELD02229051	Yes
15	http://www.meatscience.org/TheMeatWeEat/topics/fresh-meat/article/2017/03/09/pork-production-farrow-to-finish-process	No
16	SMITHFIELD01062391	Yes
17	HFC-PORKAT0000365507	Yes
18	DPP-Pork0000007801	No
19	HFC-PORKAT0000365340	Yes
20	TF-P-000518663	Yes
21	TF-P-000013975	Yes
22	SMITHFIELD01062874	Yes
23	SMITHFIELD00837212	Yes
24	TF-P-000014052	Yes
25	TF-P-000514416	Yes
26	TF-P-000179765	Yes
27	SBF0181317	Yes
28	CLMNS-0000022228	Yes
29	CLMNS-0000600011	Yes
30	TF-P-000014545	Yes
31	SMITHFIELD01311002	Yes
32	JBS 2008 Earnings Conference Call (August 13, 2009)	No
33	TF-P-002159632	Yes
34	TF-P-001718524	Yes

Exhibit No.	Description	Designated as Confidential or Highly Confidential
35	SBF0186877	Yes
36	DPP-Pork0000006250	No
37	SMITHFIELD01311143	Yes
38	Betsy Freese, Pork Powerhouses 2009, Successful Farming (2009)	No
39	TF-P-001718577	Yes
40	Q4 2009 JBS Earnings Conference Call (Mar. 8, 2010)	No
41	TF-P-000015025	Yes
42	TF-P-000160097	Yes
43	TF-P-000032520	Yes
44	TF-P-000220756 ¹	Yes
45	TF-P-000218761	Yes
46	TF-P-001718780	Yes
47	CLMNS-0000512149	Yes
48	TF-P-000040396 ¹	Yes
49	TF-P-000028527	Yes
50	TF-P-000981481	Yes
51	TF-P-000212656	Yes
52	TF-P-000102225	Yes
53	TF-P-000212871	Yes
54	TF-P-000188320	Yes
55	TF-P-000187927	Yes
56	TF-P-001131273	Yes
57	TF-P-001843852	Yes
58	TF-P-000205973	Yes
59	TF-P-000122482	Yes
60	SMITHFIELD00861337	Yes
61	SMITHFIELD01943195	Yes
62	SBF0066764	Yes
63	TF-P-000538548	Yes
64	TF-P-000304473	Yes
65	CLMNS-0000042575	Yes

¹ Produced in relevant part as the native Microsoft Excel file is not able to be converted in a cognizable form. Counsel will produce the native file(s) upon request.

Exhibit No.	Description	Designated as Confidential or Highly Confidential
66	CLMNS-0000503311	Yes
67	TF-P-000021759	Yes
68	TF-P-000069594	Yes
69	SMITHFIELD00675637	Yes
70	SMITHFIELD00662439	Yes
71	SBF0349004	Yes
72	Brian Taphorn Dep. Transcript	Yes
73	JBS-PORK-01220675	Yes
74	SMITHFIELD00302380	Yes
75	SMITHFIELD01074263	Yes
76	SMITHFIELD01228025	Yes
77	SMITHFIELD00888909	Yes
78	SMITHFIELD01177237	Yes
79	HFC-PORKAT0000095315	Yes
80	HFC-PORKAT0000068283	Yes
81	HFC-PORKAT0000102529	Yes
82	SBF0528026	Yes
83	SMITHFIELD00872455	Yes
84	HFC-PORKAT0000014557	Yes
85	SMITHFIELD00308346	Yes
86	CLMNS-0000594415	Yes
87	TF-P-001381827	Yes
88	TF-P-000923546	Yes
89	HFC-PORKAT0000153244	Yes
90	HFC-PORKAT0000356767	Yes
91	CLMNS-0000031400	Yes
92	21CFORUM-0000041544	Yes
93	21CFORUM-0000041548	Yes
94	HFC-PORKAT0000056924	Yes
95	SMITHFIELD00879785	Yes
96	CLMNS-0000102598	Yes
97	HFC-PORKAT0000061340	Yes
98	HFC-PORKAT0000062300	Yes
99	HFC-PORKAT0000064709	Yes
100	HFC-PORKAT0000064704	Yes
101	HFC-PORKAT0000130969	Yes

Exhibit No.	Description	Designated as Confidential or Highly Confidential
102	Cory Bollum Dep. Transcript	Yes
103	AGSTAT-P-0000000360	Yes
104	AGSTAT-P-0003424595	Yes
105	Greg Bilbrey, Benchmarking and Tools to Maximize Profit, London Swine Conference – Tools of the Trade (April 1-2, 2009).	No
106	DPP-Pork0000000031	No
107	AGSTAT-P-0002624471	Yes
108	AGSTAT-P-0002819815	Yes
109	TF-P-002048085	Yes
110	TF-P-000515626	Yes
111	Mark Copa Dep. Transcript	No
112	SMITHFIELD01007102	Yes
113	TF-P-001692331	Yes
114	Damon Ginther Dep. Transcript	Yes
115	SBF0459029	Yes
116	TF-P-000513839	Yes
117	TF-P-000100077	Yes
118	TF-P-000513842	Yes
119	SMITHFIELD00456587	Yes
120	TF-P-000466138	Yes
121	AGSTAT-P-0002793886	Yes
122	SMITHFIELD00472630	Yes
123	SMITHFIELD02010630	Yes
124	SMITHFIELD00948364	Yes
125	SMITHFIELD00460210	Yes
126	TF-P-000726140	Yes
127	HFC-PORKAT0000290902	Yes

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 1st day of May, 2022 at Sherman Oaks, California.

/s/ Bobby Pouya

Bobby Pouya